

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.M.JAMES

WEDNESDAY, THE 28TH FEBRUARY 2007 / 9TH PHALGUNA 1928

CRL.A.No. 738 of 2000()

CC.869/1998 of JUDL. MAGISTRATE OF FIRST CLASS COURT, THALASSERY

APPELLANT: COMPLAINANT:

THE SECRETARY,
THALASSERY MUNICIPALITY,
THALASSERY.

BY ADV. SRI.K.V.SOHAN

RESPONDENTS: ACCUSED:

O.P.ANILAN,
OTHAYOTH PARAMBATH PARAVANTHALA,
VADAKARA.

BY ADV. SRI.P.M.PAREETH

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD
ON 28/02/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

J.M. JAMES, J.

Criminal Appeal No. 738 of 2000

Dated this the 28th February, 2007.

J U D G M E N T

The complainant is the Thalassery Municipality. It proceeded against the respondent, accused, for the offence punishable under Section 138 of the Negotiable Instruments Act, by preferring a complaint, which was numbered as C.C.No.869/1998, on the file of the Judicial First Class Magistrate Court, Thalassery. When the case was posted for adducing evidence, there was no representation from the complainant. The learned Magistrate, therefore, dismissed the complaint, and acquitted the accused. Hence, this appeal, on obtaining leave, by the municipality.

2. The learned counsel, Mr.Sohan, appearing for the appellant, complainant, submitted that one of the Health Inspectors of the Municipality was prosecuting the case. However, on his retirement, the matter was entrusted with another person, and because of his inexperience, he could not get the case prosecuted by contacting the concerned advocate of the lower court. Thus, the complaint was dismissed and the accused was acquitted.

3. I have heard the arguments advanced by the learned counsel, Mrs.C.C.Jancy, on behalf of the respondent. The learned counsel opposed the plea of the counsel for the appellant for the allowing the appeal. The cheque amount was Rs. 27,741/=. This amount is due to the municipality. Because of the lapse on the part of the any of the officials of the municipality, the benefit should not be drawn by the accused, who is bound to pay the same to the Municipality. No doubt that there is an inefficiency in the administration of the Municipality in properly prosecuting the case. But I am of the view that the same cannot be a ground to be benefitted by the respondent, accused. Therefore, I am inclined to give an opportunity to both sides to raise their respective contentions before the court below.

4. Hence, I set aside the impugned order, dated 25.8.2000, and restore C.C.No.869/98, to the file of the Judicial First Class Magistrate Court, Thalassery.

5. The parties shall appear before the court below on 28.3.2007.

6. The learned Magistrate shall dispose of the matter, within three months from the date of appearance of the parties.

Criminal Appeal is allowed as above.

**J.M. JAMES,
JUDGE**

nj.